

1 SCOTT M. MAHONEY (Nev. Bar No. 1099)
2 FISHER & PHILLIPS LLP
3 300 S. Fourth Street, Suite 1500
4 Las Vegas, NV 89101
5 Telephone: (702) 252-3131
6 smahoney@fisherphillips.com

7 DONALD R. LIVINGSTON (DC Bar No. 436063)
8 ESTHER G. LANDER (DC Bar No. 461316)
9 Admitted pro hac vice
10 AKIN GUMP STRAUSS HAUER & FELD LLP
11 1333 New Hampshire Avenue, N.W.
12 Washington, D.C. 20036-1564
13 Telephone: (202) 887-4000
14 Facsimile: (202) 887-4288
15 dlivingston@akingump.com
16 elander@akingump.com

17 Attorneys for Defendant
18 DESERT PALACE, INC., d/b/a CAESARS PALACE

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

WILLIAM J. BERRY, JR.;
CYNTHIA FALLS; and SHANE
KAUFMAN,

Plaintiffs,

v.

DESSERT PALACE, INC., d/b/a
CAESARS PALACE; DOES I
through X, and ROE BUSINESS
ENTITIES I through X, inclusive,

Defendants.

Case No. 2:17-cv-00019-GMN-PAL

[PROPOSED] PROTECTIVE ORDER
REGARDING CONFIDENTIAL
DISCOVERY MATERIALS

The Court recognizes that Defendant Desert Palace, Inc., d/b/a Caesars Palace (“Defendant”) and Plaintiffs William J. Berry, Jr., Cynthia Falls, and Shane Kaufmann (“Plaintiffs”) (collectively the “parties”) and others may be called upon to disclose confidential business or private information in the course of this litigation, *Berry, et al. v. Desert Palace, Inc., d/b/a Caesars Palace, et al.*, No 2:17-cv-00019-GMN-PAL

1 (D. Nev.). Pursuant to Federal Rule of Civil Procedure 26(c), this stipulation serves to
2 protect the legitimate privacy interests, to maintain the confidentiality of information
3 entitled to protection that may be produced in discovery in this litigation, and to
4 provide for an orderly means for the parties and others to invoke confidentiality for
5 materials deserving such protection and the subsequent use of those materials in
6 accord with prevailing Ninth Circuit and U.S. District Court for the District of Nevada
7 standards, it is ordered as follows:

8 I. **DESIGNATION AS “CONFIDENTIAL”**

9 In discovery, for good cause, any document (and the contents thereof), thing,
10 testimony, response to written discovery, or information falling within the definitions
11 set forth below, may be designated and marked, in whole or in part, as “Confidential”
12 by the party producing the documents or information at the time the documents are
13 provided, produced, or made available for inspection by the other party. “Confidential
14 Information” shall be treated so throughout this litigation. The procedure for
15 designating materials as Confidential is as follows:

16 1. “Confidential Information” may be designated or marked, in whole or in
17 part, as Confidential. “Confidential Information” is defined as facts,
18 data, or material which is highly personal and private to a particular
19 individual or entity, such employee personnel files, plaintiffs’ medical
20 counseling or treatment records, and Defendant’s proprietary business
21 information, including but not limited documents with personal or
22 financial information related to Defendant’s customers. “Confidential
23 Information” also includes information that has been entrusted to a party
24 by persons not parties to this litigation upon a promise or legitimate
25 expectation of privacy that the information would be treated
26 confidentially and respectfully and not generally disclosed to others who
27 have no legitimate need of same. While such private and personal
28 information may be discoverable in this litigation, it should not be

1 disclosed in the public part of this case unless further proceedings are
2 undertaken.

3 2. The parties shall have thirty (30) days from the entry of this Stipulation
4 and Order to designate as Confidential those documents that already have
5 been produced (by them or another party) or received prior to the date of
6 such entry.

7 3. A party, person, or entity may designate materials as Confidential only if
8 they do so in good faith and reasonably believe that there is a legally
9 sound reason for the designation.

10 4. In accord with Ninth Circuit precedent, the parties agree to use the least
11 obstructing means of designating Confidential Information.

12 5. During this litigation, either party may designate as Confidential any
13 material produced in discovery by any other party or any non-party if the
14 designating party in good faith believes that the material contains
15 Confidential Information. The designating party shall have 30 days from
16 the date the material has been produced, or from the date of entry of this
17 Order, to inform the non-designating party in writing that the produced
18 material is being designated as Confidential.

19 II. DESIGNATION OF DEPOSITION TESTIMONY AS CONFIDENTIAL
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21 a. Testimony of Party Deponent

22 When appropriate and subject to certain restrictions set forth in section I *supra*,
23 any party (or their counsel) may designate a party's (their own or another party's)
24 deposition testimony (or any portion thereof, including exhibits) as Confidential by
25 advising the reporter and all parties on the record during the deposition or, thereafter,
26 by notifying the opposing party and court reporter in writing within thirty (30) days
27 after the actual receipt of a copy of a transcript.

b. Testimony of Non-Party Deponent

If a party (or their counsel) wishes to designate the deposition testimony of any of its current and/or former employees' or any other non-party deponent (or any portion thereof, including exhibits), they may do so by advising the reporter and all parties on the record during the deposition or, thereafter, by notifying the opposing party and court reporter in writing within thirty (30) days after the actual receipt of a copy of the transcript.

A non-party deponent may, within the same restrictions and propriety, designate their testimony as “Confidential” either at the deposition or in writing to the opposing party and reporter within twenty (20) business days of notification by the court reporter that the transcript is ready for review. A non-party deponent retains the right, in accordance with the Federal Rules of Civil Procedure, to seek a protective order during the deposition to preclude or limit disclosures.

III. DESIGNATION OF DOCUMENTS AND MATERIALS AS
CONFIDENTIAL

Subject to the restrictions provided in section I *supra*, documents, portions of documents, answers to interrogatories, responses to requests for admission and other materials may be designated as Confidential by stamping or otherwise marking the appropriate page of the material as Confidential. The recipient of any material marked "Confidential" pursuant to this Stipulated Protective Order shall exercise due and proper care with respect to the storage, custody, and use of Confidential Information.

IV. SUBSEQUENT DESIGNATIONS AS CONFIDENTIAL

Any material inadvertently produced without being designated as Confidential as provided in section I *supra* may be so designated at a later date by the producing party or person by sending a letter invoking such designation to each party who had received such material and by reproducing the material with a Confidential stamp on each page. The restrictions provided in section I for designating anything as Confidential shall apply.

1 V. RESTRICTIONS ON DISCLOSURE

2 Any Confidential Information shall not be disclosed to or discussed with any
3 person, except the following:

- 4 i. Unless otherwise restricted below, the individual party Plaintiffs and
5 Defendant;
- 6 ii. Counsel to the parties and their staff;
- 7 iii. Expert witnesses and consultants retained to give testimony with regard
8 to the subject matter of the Confidential Information (or a portion
9 thereof), in which case, the disclosure shall be limited to that portion of
10 Confidential Information which is related to the consulting or testimony,
11 only after having them sign a copy of the acknowledgement in this
12 protective order (see section VI *infra*);
- 13 iv. The Court, its staff, and the jury;
- 14 v. Unless otherwise restricted below, a non-party during the non-party's
15 preparation for testifying at a deposition, hearing, or trial in this
16 litigation, to the extent the Confidential Information shown to the non-
17 party, or the content of said Confidential Information, is reasonably likely
18 to be a part of the non-party's testimony on direct or cross-examination,
19 and only after having the non-party sign a copy of the acknowledgement
20 in this protective order (see section VI *infra*);
- 21 vi. Other persons only upon consent of the party designating information as
22 Confidential and only after having those persons first sign a copy of the
23 acknowledgement in this protective order (see section VI *infra*) or upon
24 order of the Court.

25 VI. SIGNATURE AND AGREEMENT TO COMPLY WITH THIS
26 STIPULATION AND ORDER

27 The persons not directly employed by counsel of record for the parties, but to
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1 whom disclosure is necessary for purposes of this litigation (e.g., third-party witnesses
2 or experts), shall be provided with this Stipulation and Order and be required to sign
3 the attached acknowledgement (Exhibit A) stating that he/she understands the terms
4 and agrees to comply with, and be bound by, this Stipulation and Order until modified
5 by either further orders of the Court or agreement of all the parties.

6 **VII. USE OF CONFIDENTIAL INFORMATION IN COURT FILINGS**

7 The parties acknowledge that this protective order does not confer blanket
8 protection and does not necessarily entitle them to file confidential information under
9 seal (or require opposing party to do so) without complying with the standards
10 articulated in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir.
11 2006), and subsequent case law, and also in accord with Local Rule IA 10-5.

- 12 i. While only good cause for protection is required for confidentiality in
13 discovery and thus might justify sealing in discovery and discovery
14 pleadings, a higher standard, compelling reason, is required for sealing of
15 evidence in relation to dispositive matters.
- 16 ii. The parties may agree that the filing party may file documents designated
17 confidential by the other party not under seal. If no such agreement is
18 made before filing, then any documents to be filed with the court
19 containing confidential material will be accompanied by a motion to seal.
20 A motion to file a document under seal will be served on opposing
21 counsel, and on the person or entity that has custody and control of the
22 document, if it is different from opposing counsel.
- 23 iii. If the designating party seeks to secure continuing protection (i.e., is in
24 favor of sealing), then the burden remains on that designating party to
25 meet the particular standard in the context of the filing (good cause for
26 discovery; compelling reason for dispositive matter use).
- 27 iv. For motions that refer to confidential material in an identifiable way, the
28 parties will publicly file a redacted version of the filing.

1 **VIII. DISPUTING AND CHALLENGING DESIGNATIONS**

2 A party to this action may, at any time, challenge the designation of
3 Confidential. The challenger must first give the designator notice and ten (10)
4 calendar days to withdraw the designation. If a resolution does not occur after the
5 parties have met and conferred as required by the Federal Rules of Civil Procedure,
6 either party may file a motion with the Court to resolve the dispute. Such motion
7 must be filed within thirty (30) calendar days of receipt of the written objection to the
8 designation. The disputed document(s) or testimony shall be submitted to the Court
9 under seal and continue to be regarded as Confidential unless and until the Court
10 determines to the contrary.

11 **IX. NO WITHHOLDING**

12 A party to this litigation may not withhold production of any document of any
13 information solely on the basis that it is Confidential. A party may, under appropriate
14 circumstances, seek greater protection than the protection afforded by this Protective
15 Order for documents or information deserving of same, but must do so by securing a
16 stipulation or by filing a motion for a protective order on or before the due date for
17 production.

18 **X. TREATMENT OF CONFIDENTIAL INFORMATION IN GENERAL**

19 Any documents, testimony, and/or information that has been designated
20 Confidential under this Order is to be used only in the above-captioned action, and
21 may not be used in any other action or for any other purpose unless the party seeking
22 to make such use acquired the documents, testimony, and/or information from a
23 source independent of the above-captioned action.

24 **XI. TREATMENT OF CONFIDENTIAL INFORMATION AFTER LITIGATION
25 CONCLUDED**

26 At the conclusion of the case (either by settlement or “final” order), the parties,
27 their counsel, and any other person having received Confidential Information shall

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1 return the same to counsel for the party providing the Confidential Information.
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5 **It is so ordered.**
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7 Dated: October 26, 2017
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11 Honorable
12 United States Magistrate Judge
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Exhibit A

ACKNOWLEDGEMENT

I HEREBY ACKNOWLEDGE THAT I HAVE READ THE FOREGOING
PROTECTIVE ORDER FOR CONFIDENTIALITY OF MATERIALS ENTERED
BY THIS COURT IN THIS LAWSUIT. I HEREBY ACKNOWLEDGE THAT I
UNDERSTAND THE ORDER AND AGREE TO MAKE MY BEST EFFORTS TO
COMPLY WITH IT AND MAINTAIN THE CONFIDENTIALITY OF
CONFIDENTIAL INFORMATION PROVIDED TO ME.

DATED: _____

(SIGNATURE)

(PRINT NAME)

ADDRESS: _____